

SENATE BILL No. 237

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-6-10; IC 35-38; IC 35-44-2-2.

Synopsis: False informing and DNA collection. Requires all persons arrested after June 30, 2009, to submit a DNA sample. Makes knowingly providing false information during an official law enforcement investigation a crime. Makes conforming amendments.

Effective: July 1, 2009.

Merritt

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 237

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-13-6-10, AS AMENDED BY P.L.173-2006,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 10. (a) This section applies to the following:

4 **(1) A person arrested after June 30, 2009.**

5 ~~(1)~~ **(2)** A person convicted of a felony under IC 35-42 (offenses
6 against the person) or IC 35-43-2-1 (burglary):

7 (A) after June 30, 1996, whether or not the person is sentenced
8 to a term of imprisonment; or

9 (B) before July 1, 1996, if the person is held in jail or prison
10 on or after July 1, 1996.

11 ~~(2)~~ **(3)** A person convicted of a criminal law in effect before
12 October 1, 1977, that penalized an act substantially similar to a
13 felony described in IC 35-42 or IC 35-43-2-1 or that would have
14 been an included offense of a felony described in IC 35-42 or
15 IC 35-43-2-1 if the felony had been in effect:

16 (A) after June 30, 1998, whether or not the person is sentenced
17 to a term of imprisonment; or



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(B) before July 1, 1998, if the person is held in jail or prison on or after July 1, 1998.

~~(3)~~ (4) A person convicted of a felony, conspiracy to commit a felony, or attempt to commit a felony:

(A) after June 30, 2005, whether or not the person is sentenced to a term of imprisonment; or

(B) before July 1, 2005, if the person is held in jail or prison on or after July 1, 2005.

(b) A person described in subsection (a) shall provide a DNA sample to the:

(1) department of correction or the designee of the department of correction if the offender is committed to the department of correction;

(2) county sheriff or the designee of the county sheriff if the offender is held in a county jail or other county penal facility, placed in a community corrections program (as defined in IC 35-38-2.6-2), ~~or~~ placed on probation, **or released on bond**; or

(3) agency that supervises the person, or the agency's designee, if the person is on conditional release in accordance with IC 35-38-1-27.

A person is not required to submit a blood sample if doing so would present a substantial and an unreasonable risk to the person's health.

(c) The detention, arrest, or conviction of a person based on a data base match or data base information is not invalidated if a court determines that the DNA sample was obtained or placed in the Indiana DNA data base by mistake.

SECTION 2. IC 35-38-1-27, AS ADDED BY P.L.173-2006, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 27. (a) If a court imposes a sentence that does not involve a commitment to the department of correction, the court shall require a person:

(1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~ **IC 10-13-6-10(a);** and

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6;

to provide a DNA sample as a condition of the sentence.

(b) If a person described in subsection (a) is confined at the time of sentencing, the court shall order the person to provide a DNA sample immediately after sentencing.

(c) If a person described in subsection (a) is not confined at the time of sentencing, the agency supervising the person after sentencing shall establish the date, time, and location for the person to provide a DNA

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sample. However, the supervising agency must require that the DNA sample be provided not more than seven (7) days after sentencing. A supervising agency's failure to obtain a DNA sample not more than seven (7) days after sentencing does not permit a person required to provide a DNA sample to challenge the requirement that the person provide a DNA sample at a later date.

(d) A person's failure to provide a DNA sample is grounds for revocation of the person's probation, community corrections placement, or other conditional release.

SECTION 3. IC 35-38-2-2.3, AS AMENDED BY P.L.3-2008, SECTION 249, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (4) Support the person's dependents and meet other family responsibilities.
- (5) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
- (6) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
- (7) Pay a fine authorized by IC 35-50.
- (8) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
- (9) Report to a probation officer at reasonable times as directed by the court or the probation officer.
- (10) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
- (11) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.

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(12) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or

(B) the person had been convicted of an offense relating to a controlled substance and the offense involved:

(i) the delivery by any person to another person; or

(ii) the use by any person on another person;

of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

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- 1 (B) does not harm the person's ability to reasonably be self
 2 supporting or to reasonably support any dependent of the
 3 person; and
 4 (C) takes into consideration and gives priority to any other
 5 restitution, reparation, repayment, or fine the person is
 6 required to pay under this section.
- 7 (21) Refrain from owning, harboring, or training an animal.
 8 (22) Participate in a reentry court program.
- 9 (b) When a person is placed on probation, the person shall be given
 10 a written statement specifying:
 11 (1) the conditions of probation; and
 12 (2) that if the person violates a condition of probation during the
 13 probationary period, a petition to revoke probation may be filed
 14 before the earlier of the following:
 15 (A) One (1) year after the termination of probation.
 16 (B) Forty-five (45) days after the state receives notice of the
 17 violation.
- 18 (c) As a condition of probation, the court may require that the
 19 person serve a term of imprisonment in an appropriate facility at the
 20 time or intervals (consecutive or intermittent) within the period of
 21 probation the court determines.
- 22 (d) Intermittent service may be required only for a term of not more
 23 than sixty (60) days and must be served in the county or local penal
 24 facility. The intermittent term is computed on the basis of the actual
 25 days spent in confinement and shall be completed within one (1) year.
 26 A person does not earn credit time while serving an intermittent term
 27 of imprisonment under this subsection. When the court orders
 28 intermittent service, the court shall state:
 29 (1) the term of imprisonment;
 30 (2) the days or parts of days during which a person is to be
 31 confined; and
 32 (3) the conditions.
- 33 (e) Supervision of a person may be transferred from the court that
 34 placed the person on probation to a court of another jurisdiction, with
 35 the concurrence of both courts. Retransfers of supervision may occur
 36 in the same manner. This subsection does not apply to transfers made
 37 under IC 11-13-4 or IC 11-13-5.
- 38 (f) When a court imposes a condition of probation described in
 39 subsection (a)(17):
 40 (1) the clerk of the court shall comply with IC 5-2-9; and
 41 (2) the prosecuting attorney shall file a confidential form
 42 prescribed or approved by the division of state court

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administration with the clerk.

(g) As a condition of probation, a court shall require a person:

- (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
IC 10-13-6-10(a);
- (2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and
- (3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a condition of probation.

SECTION 4. IC 35-38-2.5-6, AS AMENDED BY P.L.1-2007, SECTION 228, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. An order for home detention of an offender under section 5 of this chapter must include the following:

- (1) A requirement that the offender be confined to the offender's home at all times except when the offender is:
 - (A) working at employment approved by the court or traveling to or from approved employment;
 - (B) unemployed and seeking employment approved for the offender by the court;
 - (C) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;
 - (D) attending an educational institution or a program approved for the offender by the court;
 - (E) attending a regularly scheduled religious service at a place of worship; or
 - (F) participating in a community work release or community restitution or service program approved for the offender by the court.
- (2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under IC 35-44-3-5.
- (3) A requirement that the offender abide by a schedule prepared by the probation department, or by a community corrections program ordered to provide supervision of the offender's home detention, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.
- (4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.
- (5) A requirement that the offender obtain approval from the probation department or from a community corrections program

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ordered to provide supervision of the offender's home detention before the offender changes residence or the schedule described in subdivision (3).

(6) A requirement that the offender maintain:

(A) a working telephone in the offender's home; and

(B) if ordered by the court, a monitoring device in the offender's home or on the offender's person, or both.

(7) A requirement that the offender pay a home detention fee set by the court in addition to the probation user's fee required under IC 35-38-2-1 or IC 31-40. However, the fee set under this subdivision may not exceed the maximum fee specified by the department of correction under IC 11-12-2-12.

(8) A requirement that the offender abide by other conditions of probation set by the court under IC 35-38-2-2.3.

(9) A requirement that an offender:

(A) who is ~~convicted of an offense~~ described in ~~IC 10-13-6-10;~~
IC 10-13-6-10(a);

(B) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(C) whose sentence does not involve a commitment to the department of correction;

provide a DNA sample.

SECTION 5. IC 35-38-2.6-3, AS AMENDED BY P.L.173-2006, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The court may, at the time of sentencing, suspend the sentence and order a person to be placed in a community corrections program as an alternative to commitment to the department of correction. The court may impose reasonable terms on the placement. A court shall require a person:

(1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
IC 10-13-6-10(a);

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction;

to provide a DNA sample as a term of placement.

(b) Placement in a community corrections program under this chapter is subject to the availability of residential beds or home detention units in a community corrections program.

(c) A person placed under this chapter is responsible for the person's own medical care while in the placement program.

(d) Placement under this chapter is subject to the community

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1 corrections program receiving a written presentence report or
2 memorandum from a county probation agency.

3 SECTION 6. IC 35-44-2-2, AS AMENDED BY P.L.92-2007,
4 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2009]: Sec. 2. (a) As used in this section, "consumer product"
6 has the meaning set forth in IC 35-45-8-1.

7 (b) As used in this section, "misconduct" means a violation of a
8 departmental rule or procedure of a law enforcement agency.

9 (c) A person who reports, by telephone, telegraph, mail, or other
10 written or oral communication, that:

11 (1) the person or another person has placed or intends to place an
12 explosive, a destructive device, or other destructive substance in
13 a building or transportation facility;

14 (2) there has been or there will be tampering with a consumer
15 product introduced into commerce; or

16 (3) there has been or will be placed or introduced a weapon of
17 mass destruction in a building or a place of assembly;

18 knowing the report to be false commits false reporting, a Class D
19 felony.

20 (d) A person who:

21 (1) gives a false report of the commission of a crime or gives false
22 information in ~~the an~~ official **law enforcement** investigation, ~~of~~
23 ~~the commission of a crime~~; knowing the report or information to
24 be false;

25 (2) gives a false alarm of fire to the fire department of a
26 governmental entity, knowing the alarm to be false;

27 (3) makes a false request for ambulance service to an ambulance
28 service provider, knowing the request to be false;

29 (4) gives a false report concerning a missing child (as defined in
30 IC 10-13-5-4) or missing endangered adult (as defined in
31 IC 12-7-2-131.3) or gives false information in the official
32 investigation of a missing child or missing endangered adult
33 knowing the report or information to be false;

34 (5) makes a complaint against a law enforcement officer to the
35 state or municipality (as defined in IC 8-1-13-3) that employs the
36 officer:

37 (A) alleging the officer engaged in misconduct while
38 performing the officer's duties; and

39 (B) knowing the complaint to be false; or

40 (6) makes a false report of a missing person, knowing the report
41 or information is false;

42 commits false informing, a Class B misdemeanor. However, the offense

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1 is a Class A misdemeanor if it substantially hinders any law
2 enforcement process or if it results in harm to an innocent person.

3 SECTION 7. [EFFECTIVE JULY 1, 2009] **IC 35-44-2-2, as**
4 **amended by this act, applies only to crimes committed after June**
5 **30, 2009.**

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